

Paper No. 012

EWH/cv

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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The Mickyard, Inc.

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Serial No. 75/036,592

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James H. Beusse of MaGuire Voorhis & Wells for The  
Mickyard, Inc.

Gene V.J. Maciol, II, Trademark Examining Attorney, Law  
Office 109 (Ronald Sussman, Managing Attorney)

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Before Cissel, Hanak and Walters, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

The Mickyard, Inc. (applicant) filed on December 26,  
1995 an intent-to use application seeking to register the  
mark MICKYARD in typed drawing form for "promoting the

sporting events of others in the nature of sponsoring racing vehicles and racing events."

Citing Section 2(d) of the Trademark Act, the Examining Attorney refused registration on the basis that applicant's mark, as applied to applicant's services, is likely to cause confusion with the marks THE BRICKYARD and BRICKYARD 400. Registration Nos. 1,728,302 and 1,844,394. Both registrations are own by the same entity (Indianapolis Motor Speedway Corporation) and the services of both registrations are the same, with the exception being that following underlined words appear only in the recitation of services for BRICKYARD 400: "promoting and providing entertainment services in the form of an annual automobile race and related events."

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarity of the goods or services and the similarity of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the services, registrant's entertainment services in the form of an annual automobile race are obviously directed to the general population, and in particular, to automobile racing fans. On the other hand, applicant's services, as described in the application, are directed only to owners and managers of racing vehicles and racing events. These owners and managers are sophisticated individuals. In addition, there is no dispute that sponsoring a racing vehicle or racing event is an expensive proposition which is only entered into after extensive negotiations. While many owners and operators of racing vehicles and racing events are also racing fans, this does not mean that these owners and operators lose their sophistication as racing fans.

In short, while there is some relationship between registrant's services and applicant's services in that they all involve vehicle racing, the services are essentially distinct and are directed to different purchasers. In addition, the purchasers of applicant's services are quite sophisticated and are careful in entering into contracts with sponsors of their racing vehicles or racing events. As a primary reviewing Court has made clear, purchaser "sophistication is important and often dispositive because

sophisticated consumers may be expected to exercise greater care." Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992) (The Court found no likelihood of confusion resulting from the contemporaneous use of applicant's mark E.D.S. and opposer's mark EDS despite the fact that "the two parties conduct business not only in the same fields but also with some of the same companies." 21 USPQ2d at 1391).

Turning to a consideration of the marks, we will focus simply upon the first cited registration for THE BRICKYARD because this mark is, obviously, more similar to applicant's mark MICKYARD than is the mark of the second cited registration, namely, BRICKYARD 400.

The marks MICKYARD and THE BRICKYARD are similar in sound. As for visual appearance, while applicant's mark and the key word of registrant's mark (BRICKYARD) have in common the same final seven letters, we are of the view that the differences in the beginning letter of applicant's mark and the first two letters of the second word of registrant's mark cause the marks to be only slightly similar in terms of visual appearance. Finally, in terms of connotation, the marks are quite dissimilar in that the word "brick" has entirely different meaning than the first name "Mick".

Taking all factors into consideration, we find that the marks are dissimilar enough such that sophisticated purchasers of applicant's services would not confuse the two marks. This is especially true because before contracting for applicant's expensive sponsorship services, these sophisticated purchasers would engage in extensive negotiations with applicant.

In making our finding of no likelihood of confusion, we have taken into account the fact that registrant's mark THE BRICKYARD is famous. Indeed, applicant fully acknowledges this fact. (Applicant's brief pages 2 and 5).

Moreover, we also taken into account applicant's candid admission that "it is entirely possible that those encountering the mark MICKYARD would be reminded of the registered mark [THE] BRICKYARD." (Applicant's brief page 4). However, the mere fact that applicant's mark calls to mind registrant's mark does not mean that there is likelihood of confusion. The University of Notre Dame v. J.C. Food Imports, 703 F.2d 1372, 217 USPQ 505, 507 (Fed. Cir. 1983).

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**Decision:** The refusal to register is reversed.

R. F. Cissel

E. W. Hanak

C. E. Walters  
Administrative Trademark Judges  
Trademark Trial and Appeal Board